

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KENNETH ALLEN RUSSELL #390475,

Plaintiff,

v.

CASE NO. 2:16-CV-13874
HON. GEORGE CARAM STEEH

CENTRAL MICHIGAN
CORRECTIONAL FACILITY, et al.,

Defendants.

_____ /

**OPINION AND ORDER DENYING APPLICATION
TO PROCEED WITHOUT PREPAYMENT OF FEES
OR COSTS AND DISMISSING CIVIL ACTION**

I. Introduction

Michigan prisoner Kenneth Allen Russell (“plaintiff”) has filed a pro se civil action entitled as a “Request for Warrant to Retrieve Property in Possession of Another” in which he complains about the state requirement that he register as a sex offender when released from prison and seeks to obtain all of his prison, court, and government documents. The plaintiff appears to name the Central Michigan Correctional Facility, the 87th District Court, the 46th Circuit Court, the Michigan State Police, the

Michigan Department of Corrections, the Michigan Parole Board, and the Federal Bureau of Investigation as the defendants in this action. The plaintiff has also filed an application to proceed without prepayment of the filing fee for this action. See 28 U.S.C. § 1915(a)(1). Having reviewed the matter, the Court denies the application to proceed without prepayment of fees or costs and dismisses the complaint without prejudice pursuant to 28 U.S.C. § 1915(g).

II. Discussion

Under the Prison Litigation Reform Act of 1996 (“PLRA”), a prisoner may be precluded from proceeding without prepayment of the filing fee in a civil action under certain circumstances. The statute provides, in relevant part:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section, if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). In short, the “three strikes” provision requires the Court to dismiss a civil case when a prisoner seeks to proceed without prepayment of the filing fee if, on three or more previous occasions, a

federal court has dismissed the prisoner's action because it was frivolous, malicious, or failed to state a claim upon which relief may be granted. Id.; see also Dupree v. Palmer, 284 F.3d 1234, 1236 (11th Cir. 2002) (holding that "the proper procedure is for the district court to dismiss the complaint without prejudice when it denies the prisoner leave to proceed *in forma pauperis* pursuant to the provisions of § 1915(g)").

The Court's records reveal that the plaintiff has filed at least three prior civil actions in federal court which have been dismissed as frivolous and/or for failure to state a claim upon which relief may be granted. See Russell v. MDOC, et al., No. 2:15-CV-10776 (E.D. Mich. 2015); Russell v. Caruso, et al., No. 1:07-CV-662 (W.D. Mich. 2007); Russell v. Howes, No. 1:06-CV-644 (W.D. Mich. 2006). Consequently, the plaintiff is a "three-striker" who cannot proceed without prepayment of the filing fee unless he can demonstrate that he is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). To fall within the statutory exception to the three strikes rule, a prisoner must allege that the threat or prison condition is 'real and proximate' and the danger of serious physical injury must exist at the time the complaint is filed. See Rittner v. Kinder, 290 F. App'x 796, 797-98 (6th Cir. 2008) (citing Ciarpaglini v. Saini, 352 F.3d 328, 330 (7th

Cir. 2003); Abdul-Akbar v. McKelvie, 239 F.3d 307, 313 (3d Cir. 2001) (en banc)). An assertion of past danger is insufficient to invoke the exception.

Id. The plaintiff does not allege any facts which indicate that he is under imminent danger of serious physical injury so as to fall within the exception to the three strikes rule. Consequently, he is not allowed to proceed without prepayment of the filing fee for this action.

III. Conclusion

Based upon the foregoing discussion, the Court concludes that the plaintiff has filed at least three previous lawsuits which have been dismissed as frivolous and/or for failure to state a claim upon which relief may be granted and that he has failed to establish that he is under imminent danger of serious physical injury so as to fall within the exception to the three strikes provision of 28 U.S.C. § 1915(g). Accordingly, the Court **DENIES** the plaintiff's application to proceed without prepayment of fees or costs and **DISMISSES** his civil action pursuant to 28 U.S.C. § 1915(g). This dismissal is without prejudice to the filing of a new complaint with payment of the full filing fee.

Lastly, the Court concludes that it has properly applied the "three strikes" provision of 28 U.S.C. § 1915(g) such that an appeal from this

order would be frivolous and cannot be taken in good faith. 28 U.S.C. § 1915(a)(3).

IT IS SO ORDERED.

Dated: December 6, 2016

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on December 6, 2016, by electronic and/or ordinary mail and also on Kenneth Allen Russell #390475, Central Michigan Correctional Facility, 320 N. Hubbard, St. Louis, MI 48880.

s/Barbara Radke
Deputy Clerk